

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

HECTOR ARRIOLA

v.

LT. EADY

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PRISONER

Case No. 3:01CV2302(CFD)(WIG)

RULING ON MOTION TO DISMISS

The plaintiff, Hector Arriola, is currently confined at the New Haven Correctional Center in New Haven, Connecticut. He brings this civil rights action pro se pursuant to 28 U.S.C. § 1915 alleging that on September 26, 2001, he was strip searched at the Hartford Correctional Center in the presence of the defendant, a female correctional employee. The defendants move to dismiss the amended complaint. For the reasons that follow, the amended complaint is dismissed and the motion to dismiss is denied as moot.

Standard of Review

When considering a Rule 12(b) motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Thomas v. City of N.Y., 143 F.3d 31, 37 (2d Cir. 1998). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. See Tarshis v. Riese Org., 211 F.3d 30, 35 (2d Cir. 2000); Cooper v. Parsky, 140 F.3d 433, 440 (2d Cir. 1998). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." Branham v. Meachum, 77 F.3d 626, 628 (2d Cir. 1996) (quoting Grant v. Wallingford Bd. of Educ., 69 F.3d

669, 673 (2d Cir. 1995) (internal quotations omitted). In its review of a motion to dismiss, the court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transport Local 504, 992 F.2d 12, 15 (2d Cir. 1993). In reviewing this motion, the court is mindful that the Second Circuit "ordinarily require[s] the district courts to give substantial leeway to pro se litigants." Gomes v. Avco Corp., 964 F.2d 1330, 1335 (2d Cir. 1992).

Facts

The plaintiff, Hector Arriola ("Arriola"), was incarcerated at the Hartford Correctional Center in September 2001. Arriola alleges that on September 26, 2001, he was strip searched by two male correctional officers in the presence of Lieutenant Eady, a female supervisor who was on duty at the time. Arriola claims that Lieutenant Eady violated his Fourth Amendment right to privacy. Arriola alleges that he suffered emotional injuries as a result of the search.

Discussion

The defendant has filed a motion to dismiss on four grounds. As a preliminary matter, however, the court notes that the amended complaint fails to include a request for relief. On May 21, 2002, the court issued an Order notifying Arriola that his complaint was deficient because it did not include a request for relief and did not demonstrate that he had exhausted his administrative remedies. (See doc. # 4.) The court ordered Arriola to file an amended complaint that included a claim for relief and a demonstration of exhaustion. Arriola filed his amended complaint on May 29, 2002. Although Arriola included evidence that he had exhausted his administrative remedies prior to filing suit, he again did not include a request for relief in the

section of the amended complaint entitled "G. REQUEST FOR RELIEF." Accordingly, Arriola has failed to comply with Federal Rule of Civil Procedure 8(a) and an order of this court.

Arriola does include a reference to requested relief in connection with the institutional grievances he filed concerning the strip search. (See Am. Compl. at 6.) The relief sought, however, is injunctive relief. Because the strip search occurred at the Hartford Correctional Center in 2001, defendant Eady is still employed at the Hartford Correctional Center, and Mr. Arriola is now at the New Haven Correctional Center, any claim for injunctive relief against defendant Eady is moot. The Second Circuit has held that an inmate's request for declaratory and injunctive relief becomes moot when the inmate is discharged or transferred to a different correctional institution. See Martin-Trigona v. Shiff, 702 F.2d 380, 386 (2d Cir. 1983) ("The hallmark of a moot case or controversy is that the relief sought can no longer be given or is no longer needed"); Mawhinney v. Henderson, 542 F.2d 1, 2 (2d Cir. 1976) (request for injunction or restraining order is moot where prisoner is no longer incarcerated at same institution).

Additionally, though it is not clear from the amended complaint whether Arriola also names the State of Connecticut Department of Corrections ("DOC") as a defendant, to the extent Arriola seeks monetary damages or other retroactive relief against the DOC, that relief is barred by the Eleventh Amendment. See, e.g., Kentucky v. Graham, 473 U.S. 159 (1985).

However, under the doctrine of Ex parte Young, 209 U.S. 123, 159-60 (1908), "[t]he Eleventh Amendment does not preclude suits against state officers for injunctive relief, even when the remedy will enjoin the implementation of an official state policy." Erwin Chemerinsky, *Federal Jurisdiction* 419 (4th ed. 2003). "[S]tate officers have no authority to violate the Constitution and laws of the United States [and thus,] their illegal acts are stripped of

state authority” Id. at 420. Accordingly, should he wish to amend his complaint, Arriola may seek prospective injunctive or declaratory relief from an ongoing violation of the Constitution or federal law against the appropriate official of the DOC in his or her official capacity. See Ex parte Young, 209 U.S. at 159-60. The appropriate official is a person with the ability to enforce the allegedly unconstitutional policy against Arriola. See id. (state officials who threaten to enforce an unconstitutional state policy may be enjoined by a federal court).

Conclusion

The amended complaint is **DISMISSED** without prejudice for failure to comply with the Federal Rules of Civil Procedure and an Order of this court. See Fed. R. Civ. P 8(a) and 41(b). Any claims for injunctive and/or declaratory relief against the defendant Lieutenant Eady are **DISMISSED** as moot pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). The defendant’s Motion to Dismiss [**doc. # 8**] is **DENIED** as moot.

This dismissal is without prejudice to Arriola moving to amend his complaint to add an appropriate request for relief and name an appropriate defendant within twenty-one days of the date of this order.

SO ORDERED in Hartford, Connecticut, this ____ day of August 2003.

Christopher F. Droney
United States District Judge